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Ref. IG2235US

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By:

Michael Neary

Michael Neary

April 30, 2004

Date

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor: JULIEN, Gerald J..

Art Unit: 3726

Serial No.: 10/069,384

Examiner:

File Date: 02/19/2002

Compton, Eric B.

Title: "Nitinol Bearings"

### NOTICE OF APPEAL

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

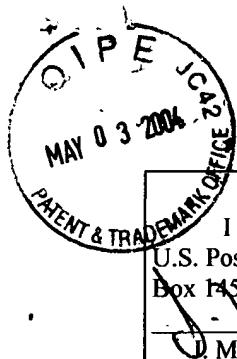
Applicants hereby appeal to the Board of Patent Appeals and Interferences from the final decision of the Examiner dated January 30, 2004, rejecting claims 1-10 and 12-20.

The fee for this Notice of Appeal is \$165.00 (small entity), payment of which is made in the attached Credit Card Authorization form.

J. Michael Neary  
Neary Law Office  
542 SW 298<sup>th</sup> Street  
Federal Way, WA 98023  
Telephone: (253) 941-7683  
FAX: (253) 941-3623

Respectfully submitted,

J. Michael Neary  
J. Michael Neary  
Attorney for Applicant  
Reg. No. 25,453



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**CERTIFICATE OF MAILING**

I certify that I am depositing this document, and any other documents referred to herein as attached, with the U.S. Postal Service as first class mail, postage prepaid, in an envelope addressed to the Commissioner for Patents, PO Box 1450, Alexandria VA 22313-1450 on April 30, 2004.

J. Michael Neary Date

Date

Inventor: Gerald J. Julien )  
Serial No.: 10/069,384 )Group Art Unit: 3726  
Filed: Feb. 19, 2002 )Examiner: Eric Compton  
Title: "Nitinol Bearings" )

**April 30, 2004**

## Letter

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Sir:

Responsive to the Final Office Action dated January 30, 2004, please reconsider the above-identified application as follows:

## Remarks

In the outstanding Office Action dated January 30, 2004, the Examiner asserted that Applicant has not complied with the conditions for receiving the benefit of an earlier filing under 35 USC 120. Applicant respectfully invites the Examiner's attention to his Declaration in which the priority is claimed, and to the Filing Receipt in which the claim for priority is acknowledged by the PTO. Finally, Applicant respectfully invites the Examiner's attention to MPEP ¶201.11(IIID), which contains the following text:

The reference required by 37 CFR 1.78(a)(2) or (a)(5) must be included in an ADS or the specification must contain or be amended to contain such reference in the first sentence following the title. If an applicant includes a benefit claim in the application but not in the manner specified by 37 CFR 1.78(a) (e.g., if the claim is included in an oath or declaration or the application transmittal letter) within the time period set forth in 37 CFR 1.78(a), the Office will not require a petition under 37 CFR 1.78(a) and the surcharge under 37 CFR 1.17(t) to correct the claim if the information concerning the claim was recognized by the Office as shown by its inclusion on the filing receipt.

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Accordingly, Applicant believes that his amendment to the specification inserting the identification of the prior applications on which he is asserting priority is proper, and Applicant respectfully requests that the Examiner approve admission of the amendment to the first paragraph of the specification submitted with Applicant's Amendment dated Dec. 10, 2003.

Respectfully submitted,



M. Michael Neary

Attorney for Applicant  
Reg. No. 25,453

542 SW 298th Street  
Federal Way, Washington 98023  
voice: (253) 941-7683; fax: (253) 941-3623